

CMI International Sub-Committee
on Limitation of Liability
in Maritime Law

List of Issues following further consideration of the NMLA's March 2012

1. What are the Consequences of non participation to the Limitation Fund? Can the claims be exercised against other assets of the owner? What is the purpose/value of limitation of liability by the shipowner (or any other person entitled to limit it's liability) in circumstances where participation in the fund is optional and/or there is non-participation and claims can be exercised against other assets?
2. What time limits should apply for Filing Claims with the Limitation Fund? Is it appropriate to coordinate the time limit for filing claims with the applicable time bar of the claims subject to limitation or may/should the time limit for participation in the limitation proceedings be shorter?
3. What are the effects of a declaration of bankruptcy on limitation of liability, if bankruptcy is declared [a] after the limitation or [b] before the limitation? Does the bankruptcy of one of the persons entitled to limitation for a particular incident affect the position of the others? If the owner becomes bankrupt, is its liability insurer (e.g. P&I Club, especially if it becomes directly liable) entitled to limit liability? Is a claimant entitled to participate in both the limitation fund and bankruptcy proceedings or not?
4. Do maritime liens survive after limitation? Do actions in rem, i.e. against the vessel, fall under Articles. 1 and 2 of LLMC? Is there a possibility of maritime liens in relation to pollution damage claims and, if so, do such liens survive limitation of liability?
5. Should interim payments out of the limitation fund be permitted? if so, against a security or without security?.
6. How do you resolve the conflicts between Article XII and XII of the CLC, Art. 42 HNSC and Art. 6 Bunker Convention?
7. How do you resolve conflict of law issues between Arts. 14 and 15 of the LLMC and Art. 15 of Rome II?
8. How do you resolve the jurisdiction, recognition and enforcement issues raised by the ECJ decision Maersk Olje)?

9. What rate of interest on the limitation amount should accrue before and/or after the fund is established?
10. Which court is entitled to hear and decide on challenges to the validity of a limitation fund? Is it the country where the limitation fund is constituted or can claimants filing suit in other countries raise objections to the validity of the fund in the courts where they have filed suit?
11. How do you deal with limitation in relation to ships not measured under the 1969 Tonnage Convention?
12. What is the shipowner's right to limit liability vis-à-vis other persons (in particular charterers)?
13. When and where can limitation proceedings be initiated and the fund established under the LLMC?.
14. How is the LLMC applied to ships with dual passenger capacity?
15. Can Claimants challenge (in the context of limitation proceedings) claims of other claimants adjudicated in proceedings in which the challenging claimants did not participate under the CLC and / or HNSC?
16. What procedure applies in your country for invoking limitation? Is there a specific method for filing an application to invoke limitation of liability? How long does this procedural step take?
17. What is the nature of a recourse claim in your country? For example, if there is a collision between Vessel A and Vessel B. Two crew members on board Vessel B die. The claims of the relatives of the crew members against the shipowner of Vessel B are claims for loss of life. If shipowner B then files a recourse claim still a claim in respect of loss of life (which could require a separate fund) or is it a claim for consequential loss under Article 2.19a) of the LLMC?